

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

**NEMAHA MILLING, INC.
Sac County, Iowa**

ADMINISTRATIVE CONSENT
ORDER

NO. 2010-AQ- 42
NO. 2010-SW- 35

TO: Dana Coulter, Registered Agent
Nemaha Milling, Inc.
210 North Railway Street
P.O. Box 26
Nemaha, Iowa 50567

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Nemaha Milling, Inc. (Nemaha Milling) for the purpose of resolving the open burning and solid waste disposal violations which occurred at the facility's property near Nemaha, Iowa. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements: Relating to legal requirements:

Bryon Whiting, Field Office 3
Iowa Department of Natural Resources
1900 North Grand Avenue, Suite E-17
Spencer, Iowa 51301
Phone: 712/262-4177

Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Windsor Heights, Iowa 50324
Phone: 515/281-8563

Payment of penalty to:

Iowa Department of Natural Resources
Henry A. Wallace Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

Pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that part; Iowa

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Code section 455B.307(2) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties, DNR has jurisdiction to issue this administrative consent order.

III. STATEMENT OF FACTS

1. Nemaha Milling is a milling and grain handling facility that manufactures animal nutrition feed products. The facility is located on the northeast side of Nemaha, Iowa at 210 North Railway Street (NW ¼ Section 22, Delaware Township, Sac County, Iowa).

2. On July 9, 2010, DNR Field Office 3 received a complaint alleging that Nemaha Milling had a large pile of rotting grain on the ground. The complainant also stated that there were a few batteries on the site as well.

3. On August 4, 2010, Bryon Whiting, DNR Field Office 3 environmental specialist senior, investigated the complaint at Nemaha Milling. Mr. Whiting noted that the site had been used for open burning. He observed evidence of open burning of various solid waste, including trade waste and waste tires. Additionally, Mr. Whiting observed improper solid waste disposal of miscellaneous solid waste, including wooden pallets, plastic tarp, and cardboard boxes. He also noted that a large pile of rotting grain had been improperly disposed of.

4. While on the investigation, Mr. Whiting provided a copy of the inspection report and the open burning and solid waste regulations to Brian Hansen, Nemaha Milling employee. The inspection report also included a Notice of Violation letter for the improper solid waste disposal and the open burning observed by Mr. Whiting during the investigation. The letter required Nemaha Milling to immediately stop open burning and improperly disposing of solid waste. The letter also indicated that it did not preclude the DNR from taking further enforcement.

5. On August 9, 2010, Dana Coulter with Nemaha Milling contacted Mr. Whiting. Mr. Coulter stated that he would have the area cleaned up immediately and would notify Mr. Whiting when the area had been cleaned up. To date, DNR Field Office 3 has not received notification that the area has been cleaned up.

6. On August 19, 2010, DNR Field Office 3 issued a Notice of Referral letter to Nemaha Milling indicating the violations observed by Mr. Whiting were being referred for further enforcement.

7. Nemaha Milling has a past history of noncompliance with the open burning and solid waste disposal regulations. In May 2001, DNR Field Office 3 received a complaint alleging the improper disposal of rotting corn. DNR Field

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Office 3 contacted Mr. Coulter, and Mr. Coulter stated the corn would be removed. In May 2005, DNR Field Office 3 issued a Notice of Violation letter to Nemaha Milling for improper solid waste disposal and open burning in a pit that Nemaha Milling owned. The letter included a copy of the open burning and solid waste regulations.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-35 relating to air quality.
2. 567 IAC 23.2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, except as provided in 23.2(2) (variances) and 23.2(3) (exemptions). On August 4, 2010, DNR Field Office 3 observed evidence of the open burning of solid waste, including waste tires and trade waste at the Nemaha Milling facility. The above facts demonstrate noncompliance with this provision.
3. Iowa Code section 455B.304 provides that the Commission shall establish rules governing the handling and disposal of solid waste. The Commission has adopted such rules at 567 IAC chapters 100-123.
4. 567 IAC 100.4 prohibits a private or public agency from dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the Director. On August 4, 2010, DNR Field Office 3 found evidence of the improper solid waste disposal of miscellaneous solid waste and rotting grain. The above facts demonstrate noncompliance with this provision.

V. ORDER

THEREFORE, it is hereby ordered and Nemaha Milling agrees to do the following:

1. Nemaha Milling shall properly dispose of all the remaining solid waste at its property within 30 days of the date the Director signs this administrative consent order and shall notify DNR Field Office 3 within 10 days of the completion of the clean-up;
2. Nemaha Milling shall immediately cease the improper solid waste disposal and open burning at its facility; and
3. Nemaha Milling shall pay a penalty of \$4,500.00 within 30 days of the date the Director signs this administrative consent order.

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VI. PENALTY

Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to that provision. Iowa Code section 455B.307(3) provides for civil penalties of up to \$5,000.00 per day for solid waste violations involved in this matter.

Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties through 567 IAC chapter 10. Pursuant to this rule, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with a \$4,500.00 penalty. The administrative penalty assessed by this administrative consent order is determined as follows:

Economic Benefit - 567 IAC chapter 10 requires that the DNR consider the costs saved or likely to be saved by noncompliance. 567 IAC 10.2(1) states that "where the violator received an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take enforcement action which includes penalties which at least offset the economic benefit." 567 IAC 10.2(1) further states, "reasonable estimates of economic benefit should be made where clear data are not available." Failure to follow the proper waste disposal regulations by the improper open burning and disposal of the tires and trade waste has allowed Nemaha Milling to save time and money. It is estimated that Nemaha Milling avoided landfill fees and transportation costs of approximately \$500.00. Based on the above considerations, \$500.00 is assessed for this factor.

Gravity of the Violation - One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. Open burning of solid waste results in the release of large amounts of particulates, carbon monoxide, and hydrocarbons. Such open burning may violate ambient air standards. Open burning releases toxins which pollute the air, may pollute groundwater, and pose a risk to human health and the environment. Improper disposal of solid waste creates nuisance conditions for surrounding property owners and the potential contamination of soil and groundwater. These violations threaten the integrity of the regulatory program because compliance with the open burning and solid waste regulations is required of all persons in this state. Therefore, \$2,000.00 is assessed for this factor.

Culpability - Nemaha Milling has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that its conduct is subject to DNR's

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rules. The open burning and solid waste disposal regulations have been in place for more than 20 years. Nemaha Milling was issued a previous Notice of Violation letter for improper solid waste disposal and open burning in 2005. The letter included a copy of the open burning and solid waste regulations. Based on the above considerations, \$2,000.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Nemaha Milling. For that reason, Nemaha Milling waives the rights to appeal this administrative consent order or any part thereof.

VIII. NONCOMPLIANCE

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.146 and 455B.307.



PATRICIA L. BODDY, INTERIM DIRECTOR
Iowa Department of Natural Resources

Dated this 7 day of
October, 2010.



NEMAHA MILLING, INC.

Dated this 28 day of
September, 2010.

Barb Stock (Con 10-6 Sac County); Kelli Book; Bryon Whiting, DNR Field Office 3;
VI.C and VII.C.1